

Consent Agenda Item 1.a

May 20-21, 2020 Board Meeting

Case No. 19CW3074 (Water Division 2); Town of Buena Vista

Summary of Water Court Application

Application to make partially absolute and for a finding of reasonable diligence.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in April 2020 to protect CWCB's instream flow water rights.

CWCB Instream Flow Water Rights

The CWCB holds water rights, including the following instream flow water rights in Water Division 2 in the Arkansas Headwaters Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
79CW0115 (Div. 2)	Cottonwood Creek	confl M&S Cottonwood Creeks	confl Arkansas River	20 (1/1 - 12/31)	03/14/1979
W-4667(1977) (Div. 2)	Middle Cottonwood Creek	confl NF M Cottonwood Creek	confl S Cottonwood Creek	10 (1/1 - 12/31)	11/15/1977
W-4665(1977) (Div. 2)	South Cottonwood Creek	confl Mineral Creek	confl M Cottonwood Creek	10 (1/1 - 12/31)	11/15/1977

Potential for Injury

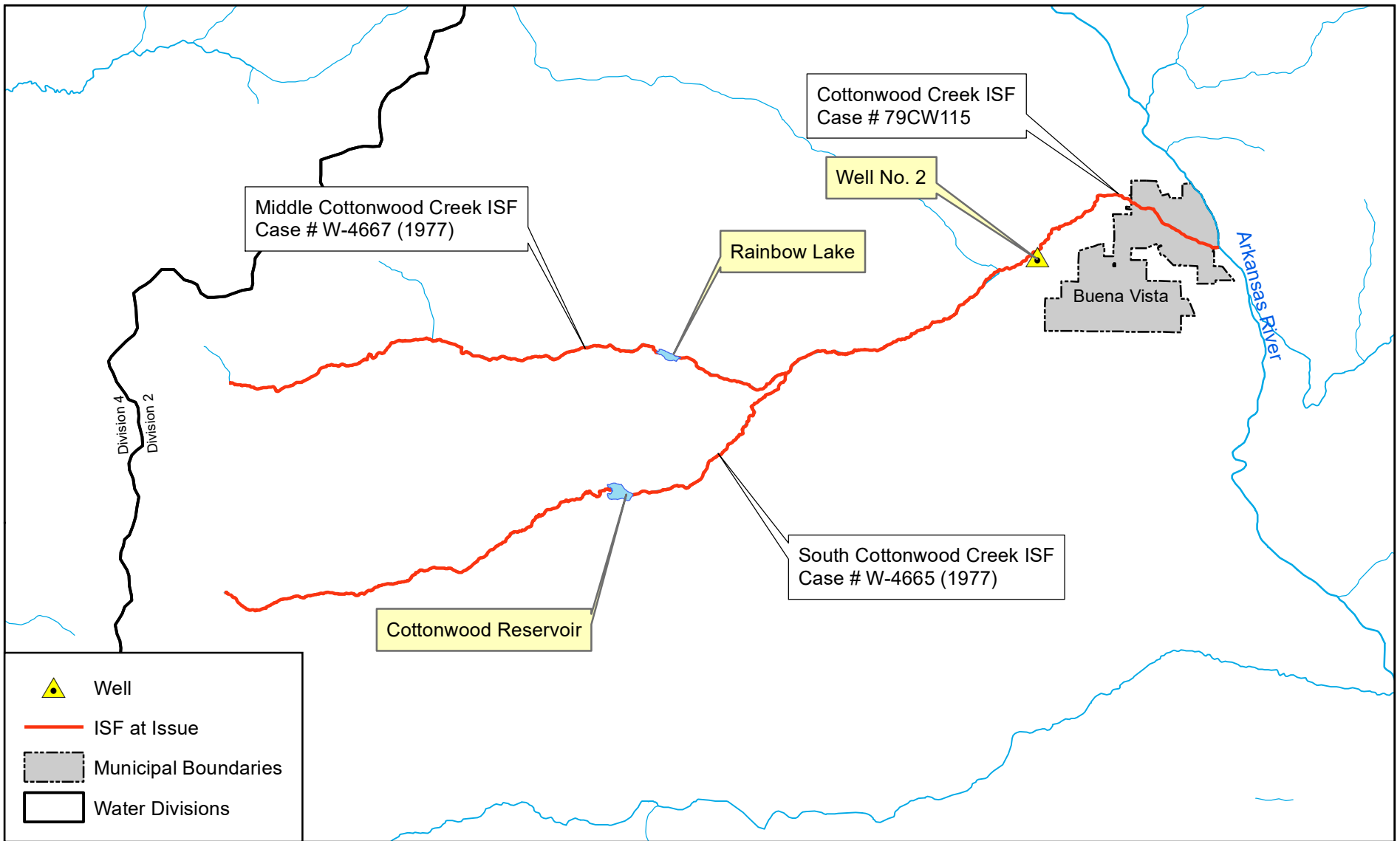
- Applicant has claimed to make absolute an exchange to a well that appears to be in excess of the amount allowed under the original decree. Also, it appears that the exchange is claimed to have occurred a month after diversion had occurred, and in the amount of the full diversion. The water court application states "Out-of-priority depletions of Well No. 2 were replaced the next month with Project Water via the exchange."

Other Objectors

No other Statements of Opposition were filed.

Attorney Representing CWCB

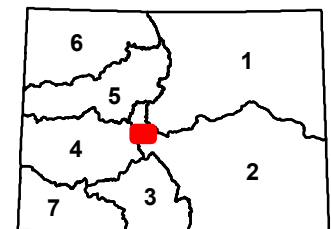
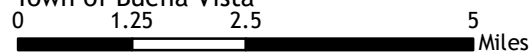
Jennifer L. Mele, First Assistant Attorney General, is assigned to this case and can be contacted at jennifer.mele@coag.gov, or 720-508-6282.



COLORADO
Colorado Water Conservation Board

Department of Natural Resources

May 20-21, 2020 CWCB Board Meeting
 Consent Agenda Item 1.a Statement of Opposition
 Case No. 19CW3074 (Div 2)
 Town of Buena Vista



DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING NOVEMBER
2019

TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during November 2019, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved, and description of ruling sought as reflected by said applications, or amendments, are as follows:

CASE NO. 2019CW3074; Previous Case No. 98CW38; TOWN OF BUENA VISTA ("Buena Vista"), c/o Phillip Puckett, Town Administrator, P.O. Box 2002, Buena Vista, CO 81211, (Please address all pleadings and inquiries regarding this matter to Applicant's attorneys: Cynthia F. Covell, Andrea L. Benson, and Gilbert Y. Marchand, Jr., Alperstein & Covell P.C., 1600 Broadway, Suite 1070, Denver, CO 80202.
Application to Make Partially Absolute and for Findings of Reasonable Diligence
CHAFFEE COUNTY

2. Name of Water Right: Buena Vista Well Exchange. **3. Description of conditional water rights, with required information from prior decree:** A. Date of original decree:

November 14, 2013, Case No: 98CW38 ("Original Decree"), Court: Water Court, Water Division No. 2. **B. Subsequent decrees awarding diligence:** This is the first diligence proceeding. **C. Decreed location:** The exchange reach decreed in the Original Decree is from the confluence of the Arkansas River and Cottonwood Creek in Section 16, Township 14 South, Range 78 West of the 6th P.M. in Chaffee County upstream on Cottonwood Creek to Well No. 2. Well No. 2 is located in SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 13, Township 14 South, Range 79 West of the 6th Principal Meridian, Chaffee County, Colorado, 780 feet west of the east section line of Section 13, and 2100 feet south of the north section line of Section 13. See location map attached hereto as Figure 1. **D. Source of Water.** Fryingpan-Arkansas Project Water ("Project Water"), which has the following decrees: **West Slope Decrees:** The Fryingpan-Arkansas Project diverts surface water from the headwaters of Hunter Creek and the Fryingpan River and their tributaries in Pitkin County, Colorado. The principal water rights were adjudicated by the decrees in C.A. 4613 (District Court, Garfield County, Colorado) dated June 20, 1958 and August 3, 1959, and were modified by the decree in Case No. W-829-76 (District Court, Water Division 5, Colorado) dated November 27, 1979, and were supplemented by the decree in Case No. 83CW352 (District Court, Water Division No. 5), dated May 31, 1985. These water rights have an appropriation date of July 29, 1957. Water diverted under these decrees travels under the Continental Divide through Boustead Tunnel, which empties into Turquoise Reservoir. This water may be stored in Turquoise Reservoir, Twin Lakes Reservoir, and elsewhere, and applied to beneficial use

**Attachment
Consent Agenda Item 1.a
May 20-21, 2020**

within the boundaries of the Southeastern Colorado Water Conservancy District. Because the water is imported from another river basin, it is fully consumable in Water Division No. 2. **East Slope Decrees:** The Fryingpan-Arkansas Project also diverts and stores surface water from the Arkansas River and its tributaries in Lake, Chaffee, Fremont and Pueblo Counties. The principal water rights were adjudicated by the decrees in Civil Action No. 5141 (District Court, Chaffee County, Colorado) dated July 9, 1969, and Civil Action No. B-42135 (District Court, Pueblo County), dated June 25, 1962, and were modified and supplemented by the judgment and decree in Case No. 80CW6 (District Court, Water Division No. 2), dated October 23, 1980. These water rights include storage in Turquoise Reservoir, Twin Lakes Reservoir and elsewhere, with an appropriation date of February 10, 1939, and are expressly decreed for reuse and exchange for beneficial use within Southeastern's district boundaries. Under these decrees, Turquoise Reservoir and Twin Lakes Reservoir may store native or imported water, directly or by exchange with each other or with Pueblo Reservoir. E. **Appropriation dates and amounts:** In Case No. 96CW17 (the "96CW17 Decree"), Buena Vista was awarded a conditional decree for an appropriative right of exchange for up to 75 acre-feet per year of Project Water at a maximum exchange rate of 10 cfs, from the confluence of the Arkansas River and Cottonwood Creek in Section 16, Township 14 South, Range 78 West of the 6th P.M. in Chaffee County, up Cottonwood Creek to locations including Rainbow Lake and Cottonwood Reservoir as the upstream termini. The point of diversion for Cottonwood Reservoir is located on South Cottonwood Creek, in Section 36, Township 14 South, Range 80 West of the 6th P.M. in Chaffee County, Colorado. The point of diversion for Rainbow Lake is located on Middle Cottonwood Creek, in the South ½ of Section 19 and the North ½ of Section 30, Township 14 South, Range 79 West of the 6th P.M. in Chaffee County. The locations of these two reservoirs are shown on Figure 1. Well No. 2 is within this exchange reach, and the Original Decree included Well No. 2 as an additional point of exchange of Buena Vista's allocated and purchased Project Water. As provided in the Original Decree, the Buena Vista Well Exchange is subject to and included within the exchange limits in the 96CW17 Decree. Well No. 2 may divert Project Water by exchange as provided in the 96CW17 Decree, with an appropriation date of February 10, 1939, as provided in that decree. F. **Uses.** All municipal purposes, including domestic, firefighting, commercial, industrial, and recreational uses, and irrigation of parks, open spaces, golf course, lawns and gardens within Buena Vista's service area. 4. **Detailed outline of what has been done toward completion or for completion of the appropriation and application of water to beneficial use as conditionally decreed, including expenditures:** A. During this diligence period, Buena Vista entered into agreements with Upper Arkansas Water Conservancy District ("Upper Arkansas") pursuant to which the parties have agreed, among other things, to work cooperatively to develop a long-term integrated plan of water management that may include a plan to increase exchange potential on Cottonwood Creek. Increased exchange potential on Cottonwood Creek will allow Buena Vista to operate the Buena Vista Well Exchange more frequently. B. Out of priority depletions from Well No. 2 are augmented as provided in the Original Decree. The Original Decree provides for release of water from storage in Cottonwood Lake when needed to provide augmentation to Cottonwood Creek, and the 96CW17 Decree provides, *inter alia*, for Buena Vista to exchange Project Water to storage in Cottonwood Lake for augmentation uses. Cottonwood Lake is owned by the United States Forest Service and is used pursuant to a Special Use Permit held by Upper Arkansas. During this diligence period, Buena Vista entered into agreements with Upper Arkansas to evaluate expansion of the available operational storage capacity of Cottonwood Lake, and to work with the Forest Service to obtain a new or renewed Special Use Permit for storage space in Cottonwood

Lake. C. Buena Vista has continued to purchase and use Project Water allocated by Southeastern. To the best of Buena Vista's knowledge, its purchase and use of Project Water has been and remains consistent with Southeastern's decrees and Allocation Principles (as they may from time to time be amended) and such policies, procedures, contracts, charges and terms as have been lawfully determined by Southeastern from time to time in its discretion. Buena Vista's current Project Water supplies total 1,137 acre-feet. D. During this diligence period, Buena Vista has continued to improve, operate and maintain its integrated water supply system, of which the Buena Vista Well Exchange decreed in the Original Decree is a part. To enable Buena Vista to more effectively provide water service to its existing and future customers, it has spent approximately \$221,700.00 in the construction, repair and improvement of its water system infrastructure and related infrastructure and projects that are part of the efficiency, operation and maintenance of its integrated water supply system. These efforts have allowed Buena Vista to continue to provide reliable water service to its existing customers and to plan for anticipated future demand. E. Buena Vista has defended its water rights, including the Buena Vista Well Exchange, against applications filed by others in cases in which Buena Vista has determined that injury to its water rights could occur in the absence of appropriate protective terms and conditions. During this diligence period, Buena Vista has expended approximately \$100,000.00 in water counsel fees, and \$250,000.00 in water engineering fees in opposition to water court applications filed by others, in order to protect and defend its water rights.

5. Claim to Make Absolute a Portion of the Conditional Exchange:

A. During Water Year 2019, Buena Vista operated the Buena Vista Well Exchange in priority by pumping 0.236 million gallons per day (MGD) or 0.366 cubic feet per second (cfs) at the Well No. 2, on June 21, 2019, when there was no call on Cottonwood Creek. Out-of-priority depletions of Well No. 2 were replaced the next month with Project Water via the exchange. A copy of the June, 2019, accounting is attached hereto as Appendix A. Buena Vista's written request for permission from the Water Commissioner to operate the exchange to the Well No. 2 on July 17, 2019, and the Water Commissioner's written consent is attached hereto as Appendix B. B. Use: The water withdrawn by exchange from Well No. 2 was used in Buena Vista's municipal water distribution to provide municipal water service to its customers.

6. Names and addresses of owners of the land upon which any new diversion structure or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored: Buena Vista has not constructed any new diversion structure or storage structure, or modification to any existing diversion or storage structure in connection with its operation of the Buena Vista Well Exchange. The land on which Well No. 2 is located is owned by Buena Vista. WHEREFORE, Applicant Town of Buena Vista, having demonstrated that it has completed appropriation of 0.366 cfs of the Buena Vista Well Exchange and has steadily applied effort to complete the appropriation of the remaining conditional portion of the Buena Vista Well Exchange in a reasonably expedient and efficient manner under all the facts and circumstances, respectfully requests that this Court find that 0.366 cfs of the Buena Vista Well Exchange have been made absolute, and that Buena Vista has exercised reasonable diligence in putting to beneficial use the remaining portion of the conditional Buena Vista Well Exchange, which should be continued for another six years, or such period as may otherwise be permitted by law.

THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT AND PROTEST WITHIN THE TIME PROVIDED BY STATUTE, OR BE FOREVER BARRED.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of January 2020, (forms available at Clerk's office or at www.courts.state.co.us, after serving parties and attaching a certificate of mailing, filing fee \$192.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.

Witness my hand and the seal of this Court this 12th day of December 2019.

Michele Santistevan



Michele M. Santistevan, Clerk
District Court, Water Div. 2
Pueblo Judicial Building
501 N. Elizabeth Street, Suite 116
Pueblo, CO 81003; (719) 404-8749

(Court seal)
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